

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

HAROLD LEE FIELDS,

Defendant-Appellant.

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UNPUBLISHED

March 20, 2003

No. 238495

Oakland Circuit Court

LC No. 01-178671-FH

Before: Griffin, P.J., and Neff and Gage, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for felonious assault, MCL 750.82, and felony-firearm, MCL 750.227b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal defendant argues that the trial court abused its discretion in denying his motion for new trial, based on improper comments by complainant and the prosecutor. The prosecutor had agreed that there should be no reference to prior unreported incidents of domestic violence unless defendant opened the door, and that complainant should not be referred to as the victim.

Under MCR 6.431(B), a trial court may grant a new trial on any ground that would support appellate reversal of the conviction or because it believes that the verdict has resulted in a miscarriage of justice. A trial court's decision on a motion for new trial is reviewed for abuse of discretion. *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998).

On direct examination, complainant referred to a PPO and defendant's prior threats. Both statements were voluntary, unanticipated and the prosecutor stopped her from elaborating in both instances. In general, an unresponsive, volunteered answer to a proper question is not cause for granting a mistrial, particularly where the defendant has rejected the opportunity to have the jury charged with a cautionary instruction. *People v Lumsden*, 168 Mich App 286, 299; 423 NW2d 645 (1998). Where the comments were brief and were not emphasized to the jury, there is no showing that they affected the fairness of defendant's trial. *Id.*

In closing argument, the prosecutor twice referred to complainant as the victim. Defendant did not object. Where a defendant fails to object to an alleged prosecutorial impropriety, the issue is reviewed for plain error. *People v Carines*, 460 Mich 750, 752-753; 597 NW2d 130 (1999). A prosecutor need not confine argument to the blandest of all possible terms.

*People v Aldrich*, 246 Mich App 101, 112; 631 NW2d 67 (2001). There is no showing that the reference to complainant as the victim affected the outcome of the case.

Affirmed.

/s/ Richard Allen Griffin

/s/ Janet T. Neff

/s/ Hilda R. Gage